What Those New Decisions Mean

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The Congressional Witch Hunt Is Over

If Torquemada had received a Papal edict ordering him to cease burning heretics unless actually caught defacing Church property, he would have been no more appalled than the staffs of the House Un-American Activities Committee and the Senate Internal Security Committee by the *Watkins* and *Sweezy* decisions. A deep gloom has settled on both. The day after the Supreme Court handed down its verdict, the Senate committee was supposed to interrogate several long harassed officials of a Left wing union. But its acting chairman, Senator Hruska (R. Neb.) meekly consented to a week's postponement on request of defense counsel, Victor Rabinowitz. Mr. Rabinowitz said he needed a week to study the Watkins opinion and advise his clients. It was apparent that what he wanted to advise them on was whether under this decision it was any longer necessary to answer the kind of questions in which these committees specialize. The House committee later the same day postponed a similar executive session for the same humbling reasons. On both committees, staff members were unusually subdued and polite, as is natural in men threatened by technological unemployment. For while no one here in Washington is sure precisely what the Court's ruling in *Watkins* means, there is agreement on both sides of the fence that it means serious trouble for both inquisitorial Committees.

The Public Pillory

"Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the Bill of Rights and the Fourteenth amendment."

—Chief Justice Warren, in Sweezy v. New Hampshire.

A Natural for the Smithsonian

Our own opinion is that June 17, 1957, will go down in the history books as the day on which the Supreme Court irreparably crippled the witch hunt. The Court did not in so many words declare ideological inquisition by Congress unconstitutional under the First amendment, but it came as close to saying that as is probably feasible. A few more cases may be required to develop clearly the full implications. But when these appear it will be seen that the House Un-American Activities Committee as we have known it for two painful decades is out of business. So, I believe, are the little un-American committees set up by the States in imitation of it. The Internal Security Committee of the Senate, too, will have to behave quite differently if it is to survive at all. The Court under Warren struck four mighty blows last Monday for a freer and saner America. The *Service, California Smith Act, Sweezy* and *Watkins* decisions represent giant steps away from the peculiarly un-American habits engendered in the era which began with Dies and closed with McCarthy. The best thing Chairman Walter can do now is to bequeath himself to the Smithsonian.

Limits of Congressional Investigation

"There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress. . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible. . . . The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. . . . Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged."

—Chief Justice Warren, in Watkins v. U.S.

Where They Made Their Mistake

We would not blame him and his colleagues if after all these years of witch hunting, they *really* suspected witchcraft. While attention was diverted to chasing random Communists, who had time to suspect citizens as solid as Eisenhower and Brownell? Who would have dreamt that they would pack the Court with Constitution-carrying Republicans? Who could have foreseen five years ago that the first Republican victory in a presidential election since 1928 would give us a court like this one? Where Walter and Eastland made their mistake is now obvious. They investigated the wrong party.

The discerning noticed some time ago, of course, that poor Earl Warren had fallen prey to possession by a liberalistic succubus beyond hope of exorcism. But Harlan—hand picked by Brownell—had been regarded as impervious to demoniac wile. Yet it was Harlan who wrote the *Service* and *California Smith Act* decisions. The effect of the former is moral. Mr. Service, eight times cleared, once by a grand jury, six times by loyalty security boards, and once by a Senate investigating committee, was nonetheless fired by Secretary of State Acheson under pressure from McCarthy and a weak-kneed Loyalty Review Board. Mr. Service was McCarthy's first triumph, and one of the China Lobby's earliest targets. Mr. Justice Harlan's ruling was procedural and is too complex to explain here. But in effect it held that once a Secretary of State has set up formal regulations to provide some semblance of due process in loyalty cases, he has waived such powers of summary discharge as were conferred on him by the so-called McCarran riders. He cannot turn around and summarily fire

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a man who has been cleared by the normal departmental loyalty-security procedures. We congratulate Mr. Service and his faithful counsel, Charles Edward Rhetts, on their long fight for justice.

The Same Harlan

California's was the first Smith Act case in which the Supreme Court has adjudged the sufficiency of the evidence. The *Dennis* decision dealt only with the constitutionality of the Smith Act. The Pittsburgh case was remanded for a new trial on the informer issue. Here for the first time the Supreme Court was doing what Chief Justice Vinson promised it would some time do when he wrote *Dennis*. It was evaluating the evidence and the conduct of the trial. The result was not only to order the acquittal of five of the California defendants but to set standards for the retrial of the other nine which will make new convictions in future Smith Act trials much more difficult. It was strange to get this decision from the same Mr. Justice Harlan who wrote so extreme an opinion on the Circuit bench upholding the conviction of the "second string" Communist leaders. Much of what Mr. Justice Harlan wrote for the majority (only Mr. Justice Clark dissenting on the result) is fine spun Alice-in-Wonderland nonsense of the kind bred on courts trying to reconcile with First amendment freedoms a statute which makes the dissemination of ideas a crime. What Mr. Justice Black and Douglas in their separate opinion assert (see box on page four) will some day be the law. But in the meantime it is helpful to have Mr. Justice Harlan insisting that there must be some semblance of "incitement to action" to make a Smith Act conviction stick. A few more astringent decisions like this one and the Act will die on the vine.

No General Power to Expose

"We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals."

—Chief Justice Warren, in Watkins v. U.S.

On The First Amendment

"Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of law-making. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by law-making. . . .

"Nor does the witness alone suffer the consequences. Those who are identified by witnesses and thereby placed in the same glare of publicity are equally subject to public stigma, scorn and obloquy. Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time. That this impact is partly the result of non-governmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction."

—Chief Justice Warren in Watkins v. U.S.

A Triumph for Edgerton

The *Watkins* and *Sweezy* decisions were a triumph for three brave dissenters on the Circuit bench, Chief Judge Henry W. Edgerton and Judge David L. Bazelon of the Court of Appeals for the District of Columbia, and Judge Charles E. Clark of the Second Circuit in New York. Judges Edgerton and Bazelon wrote the first opinion here on Watkins, 2-1 for acquittal only to have themselves hastily reversed on rehearing by the full bench. More important, however, is the fact that Chief Justice Warren in *Watkins* and *Sweezy* has largely adopted the reasoning of that noble and moving dissent Chief Judge Edgerton wrote in 1948 in the *Barsky* case when cold war was just beginning to stow away traditional freedoms in deep freeze. Judge Edgerton was the lone dissenter a decade ago against the decisions which sent the Hollywood Ten, the members of the Joint Anti-Fascist Refugee Committee, Dr. Edward Barsky, Helen Bryan and Richard Morford of the National Council for Soviet American Friendship to jail for contempt of the House Un-

What the Supreme Court Had to Say of Political Freedom in the Sweezy Case

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channelled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society."

—Chief Justice Warren, in Sweezy v. New Hampshire.

"In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. . . . Whatever, on the basis of massive proof and in the light of history, of which this court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations that appear in the record to warrant such a view of the Progressive Party. This precludes the questioning that petitioner resisted in regard to that party."

—Mr. Justice Frankfurter, with Mr. Justice Harlan, concurring in Sweezy v. New Hampshire.

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American Activities Committee. In those days the victims were still pleading the First amendment, not the Fifth, but except in the case of Eisler who fled, the Supreme Court steadily denied them a hearing. A footnote to the Warren opinion now dismisses these old decisions as "contrasting views" and cites with honor the Edgerton dissent and that by Judge Clark in the Josephson case, the other dissent in that period which made a fundamental attack upon the House Committee.

The First Amendment at Last

This line of attack, now adopted by a majority of the Court, is that the legislative power of investigation is limited by the First amendment, and that a summons to appear in the public pillory of the House Un-American Activities Committee or a similar State body may "abridge" freedoms of speech, press and assembly by intimidation. This way of violating the First and Fourteenth amendments is made easy by the adoption of vague resolutions sweepingly permitting investigators to make their own preconceptions a measure of orthodoxy and a mandate to harass heretics. Five Justices in *Watkins* — Warren, Black, Douglas, Harlan and Brennan—serve notice that they are not disposed any longer to punish for contempt those who fall afoul of what any current House investigator may consider "un-American." In *Sweezy,* five Justices — Warren, Black, Douglas and Brennan for the majority, Frankfurter and Harlan concurring—serve notice similarly that investigations carried on by such States as New Hampshire to ferret out so-called "subversive" persons will likewise be disapproved by the Court. Where there is the possibility of infringing First amendment rights, neither Congress nor State legislatures can be sure any longer of having their authority enforced by contempt proceedings unless they spell out carefully by specific resolution just what information they want and why. And the excuse had better be a good one. This casts its shadow, too, over that vague Senate committee mandate to investigate anything which might affect "internal security."

"The Stain Is Just As Deep"

"The sanction emanating from legislative investigations is of a different kind than loss of employment. But the stain of the stamp of disloyalty is just as deep. The inhibiting effect in the flow of democratic expression and controversy upon those directly affected and those touched more subtly is equally grave."

—Chief Justice Warren, in Sweezy v. New Hampshire.

On the "Un-American" Committee

"It would be difficult to imagine a less explicit authorizing resolution [than that establishing the House Un-American Activities Committee]. Who can define the meaning of 'un-American'? What is that single, solitary 'principle of the form of government as guarteed by our Constitution'? . . . The Government contends that the public interest at the core of the investigations of the Un-American Activities Committee is the need by the Congress to be informed of efforts to overthrow the Government by force and violence so that adequate legislative safeguards can be erected. From this core, however, the Committee can radiate outward infinitely to any topic thought to be related in some way to armed insurrection. The outer reaches of this domain are known only by the content of 'un-American Activities.' Remoteness of subject can be aggravated by a probe for a depth of detail even farther removed from any basis of legislative action. A third dimension is added when the investigators turn their attention to the past to collect minutiae on remote topics, on the hypothesis that the past may reflect upon the present. . . . An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position if they are to strike a balance between the public need for a particular investigation and the right of citizens to carry on their affairs free from unnecessary governmental interference."

—Chief Justice Warren in Watkins v. U.S.

Series of Reversals Expected

This is not as novel as it appears when looked at in the perspective of committees hitherto regarded as sacrosanct. Senator McClellan got himself a specific resolution to investigate labor rackets. Congress and the State legislatures will have to act the same way in dealing with radical activities hitherto regarded as fair game in open season. The resolution will have to be precise and in addition the witness will have to be told at the hearing (and not later on trial for contempt) just exactly why the question is being asked him and why the information sought is pertinent. The Court does not say in advance that there can be no investigation which does not impinge on First amendment freedoms. But by forcing Congress and the legislatures to be precise in this way the Court makes it impossible to carry on the witch hunt as we have known it. The difference will become strikingly visible when the Arthur Miller and Otto Nathan contempts of the House Committee and the cases of the newspapermen who invoked

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What the Supreme Court Had to Say of Academic Freedom in the Sweezy Case

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

—Chief Justice Warren, in Sweezy v. New Hampshire.

"These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.

—Mr. Justice Frankfurter, with Mr. Justice Harlan, concurring in Sweezy v. New Hampshire.

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An End Promised to Punishment of Radicals by Defamation

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the First amendment before the Senate Internal Security Committee come up on appeal. All these cases, and those of Harry Sacher and Lloyd Barenblatt, will almost certainly be reversed for in none of them was the witness able to learn just what the respective Committees wanted and why. Beyond that, under the *dicta* of both *Watkins* and *Sweezy*, it is hard to imagine the Court allowing a Senate committee to investigate the press.

As Martin Dies Planned It

I have set forth in boxes through these pages the main points made by the Court and the concurring Justices so that readers may see for themselves what is here summarized. We have come to the end of an era. Martin Dies at the very beginning of it made clear that he conceived of the House Un-American Activities Committee as a kind of roving grand jury, acting not in traditional secrecy but in the full blaze of publicity to punish by defamation those radicals who could not be reached by criminal prosecution. Now we have the Supreme Court saying in *Watkins* that Congress is not "a law enforcement or trial agency," and that it cannot expose for the sake of exposure in the area of ideas protected by the First amendment. The *Sweezy* decision says the same thing as regards investigations by State legislatures. It stresses heavily protection of academic freedom as well as political liberty from such inquisitions, and it also contains a side remark that may sound the end for that type of question which is designed not to elicit information but to break a man morally by making him an informer. "The questioning," Chief Justice Warren said of the interrogation our friend Paul M. Sweezy co-editor of the *Monthly Review* resisted in New Hampshire, "indicates that the investigators . . . were not acquiring new information as much as corroborating data already in their possession."

A New Birth of Freedom

The *Watkins* and *Sweezy* decisions must be read together. They promise a new birth of freedom. They make the First amendment a reality again. They reflect the steadily growing public misgiving and distaste for that weird collection of opportunists, clowns, ex-Communist crackpots, and poor sick souls who have made America look foolish and even sinister during the last ten years with their perpetual searching under the national bed for little men who weren't there. That suicide on the eve of the San Francisco hearings was only the latest and most dramatic evidence of the harm they have done. The full measure of the agony and suffering they have inflicted will never be known. We are grateful to the Chief Justice and to the Court, and we may all be proud as Americans that the great traditions of our country had sufficient strength to overcome them at last.

Black and Douglas on the Smith Act

"I would reverse every one of those convictions [under the Smith Act] and direct that all the defendants be acquitted. In my judgment the statutory provisions on which these prosecutions are based abridge freedom of speech, press and assembly in violation of the First Amendment. . . . The kind of trials conducted here are wholly dissimilar to normal criminal trials. Ordinarily these "Smith Act' trials are prolonged affairs lasting for months. In part this is attributable to the routine introduction in evidence of massive collections of books, tracts, pamphlets, newspapers and manifestos discussing Communism, Socialism, Capitalism, Feudalism and governmental institutions in general, which, it is not too much to say, are turgid, diffuse, abstruse, and just plain dull.

"Of course, no juror can be expected to plow his way through this jungle of verbiage. The testimony of witnesses is comparatively insignificant. Guilt or innocence may turn on what Marx or Engels or someone else wrote or advocated as much as a hundred or more years ago. Elaborate, refined distinctions are drawn between 'Communism', 'Marxism', 'Leninism', 'Trotzkyism' and 'Stalinism.' When the propriety of obnoxious or unorthodox views about government is in reality made the crucial issue, as it must be in cases of this kind, prejudice makes conviction inevitable except in the rarest circumstances."

—Justices Black and Douglas, in the California cases.

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